

SUPREME COURT OF ARKANSAS

No. CR08-1132

CLARENCE D. KELLY,
PETITIONER,

VS.

MISSISSIPPI COUNTY CIRCUIT
COURT; HONORABLE DAVID
BURNETT, CIRCUIT JUDGE;
HONORABLE RALPH WILSON,
CIRCUIT JUDGE; HONORABLE
BARBARA HALSEY, CIRCUIT
JUDGE; HONORABLE CINDY
THYER, CIRCUIT JUDGE,

RESPONDENTS,

Opinion Delivered October 2, 2008

PETITION FOR EMERGENCY
TEMPORARY STAY OF
PROCEEDINGS; WRIT OF
CERTIORARI; WRIT OF
PROHIBITION, OR IN THE
ALTERNATIVE, WRIT OF
MANDAMUS.

PETITION FOR EMERGENCY
TEMPORARY STAY DENIED; WRIT
OF CERTIORARI DENIED; WRIT
OF MANDAMUS DENIED.

PER CURIAM

1. COURTS — RECUSAL OF JUDGES — RESPONDENT JUDGES WHO RECUSED WERE WITHOUT AUTHORITY TO RECONSIDER THEIR RECUSALS, ALTHOUGH A JUDGE WHO RECUSED COULD PERFORM THE MINISTERIAL ACT OF ASSIGNING ANOTHER JUDGE TO THE CASE AFTER HIS RECUSAL. — Under *Bolden v. State*, “the disqualification of a judge generally deprives him of the authority to perform any judicial act or to perform any act calling for an exercise of judicial discretion in connection with the pending cause, except to select another judge or to make a transfer of the case in accordance with the law”; accordingly, the respondent judges who recused were without authority to reconsider, as recusal ended their jurisdiction; after his own recusal, one of the respondent judges could perform, in his role as the administrative judge, the ministerial act of assigning another judge to the case.
2. COURTS — ADMINISTRATIVE ORDER NO. 14 — THERE WAS NO APPARENT REASON WHY JUDGE TO WHOM CASE WAS ASSIGNED SHOULD NOT PROCEED TO TRIAL. — Under Administrative Order No. 14(2)(c)(2), “a circuit judge to whom a case is assigned shall accept that case unless he or she is disqualified or the interests of justice require that the case not be heard by that judge”; petitioner does not argue that the judge to whom his case was

assigned is wholly without jurisdiction; and rightfully so, as the judge clearly does have jurisdiction; therefore, as all of the judges who ordinarily preside over criminal cases have recused, there is no apparent reason why the judge to whom the case was assigned should not proceed to trial.

Petition for emergency temporary stay, denied; petition for writ of certiorari, denied; petition for writ of mandamus, denied.

Ford, Glover & Roberts, by: *Danny W. Glover*; and *Daggett, Donovan & Perry, PLLC*, by: *Joe Perry*, for petitioner.

Dustin McDaniel, Att’y Gen., by: *Brad Newman*, Ass’t Att’y Gen., for respondents.

Petitioner Clarence D. Kelly petitions this court to stay proceedings in Mississippi County Circuit Court; to issue a writ of certiorari quashing the recusal orders of Judge Ralph Wilson, Judge Barbara Halsey, and Judge Cindy Thyer; to issue writs of mandamus directing Judges Halsey and Thyer to reconsider their recusals; and to issue a writ of certiorari, or in the alternative, a writ of prohibition preventing Judge David Burnett from conducting the trial scheduled October 13, 2008. Petitioner asserts that it is a violation of the court’s administrative plan for Judge Burnett to preside over this case.

Kelly is charged with capital murder in the Blytheville Division of Mississippi County Circuit Court, where Judges Wilson, Halsey, and Thyer ordinarily hear criminal cases. First, Judge Ralph Wilson recused on August 5, 2009. Thereafter, Judges Halsey and Thyer recused on August 13, 2008. Judge Wilson, the administrative judge, then appointed Judge Burnett to Kelly’s case.

In a case cited by Petitioner, we have said that “the disqualification of a judge generally deprives him of the authority to perform any judicial act or to perform any act calling for an

exercise of judicial discretion in connection with the pending cause, except to select another judge or to make a transfer of the case in accordance with the law.” *Bolden v. State*, 262 Ark. 718, 561 S.W.2d 281 (1978). Administrative Order 14(2)(c)(2) provides that “cases may be reassigned by the administrative judge as necessity requires.”

Under *Bolden*, neither Judge Halsey nor Judge Thyer may reconsider, as a recusal ends their jurisdiction. However, after his own recusal, Judge Wilson may perform, in his role as an administrative judge, the ministerial act of assigning another judge to the case.

Under Administrative Order 14(2)(c)(2), “a circuit judge to whom a case is assigned shall accept that case unless he or she is disqualified or the interests of justice require that the case not be heard by that judge.” Kelly argues that the administrative plan has been violated, but points only to a proposed solution of requiring a judge who has recused to, in effect, set aside an order of recusal, which is in direct conflict with Administrative Order 14.

Petitioner does not argue that Judge Burnett is wholly without jurisdiction; and rightfully so, as Judge Burnett clearly does have jurisdiction. Therefore, as all of the judges who ordinarily preside over criminal cases have recused, there is no apparent reason why Judge Burnett should not proceed to trial.

Motion for stay denied.

Motion for writ of mandamus denied.

Motion for writ of certiorari denied.